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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 111207732-1745-01]

RIN 0648-BB73

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species;

Fishing Restrictions for Bigeye Tuna and Yellowfin Tuna in Purse Seine Fisheries for 2012

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule extends the dates of applicability of existing regulations applicable to U.S. purse seine vessels operating in the western and central Pacific Ocean (WCPO) through December 31, 2012. NMFS issues this rule under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to implement a decision of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). The WCPFC decision, made December 20, 2011, extends the effectiveness of the WCPFC's "Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean" (CMM 2008-01), originally scheduled to expire on December 31, 2011. CMM 2008-01 is the basis for the existing regulations whose dates of applicability are being extended by this interim rule. Under this rulemaking, these regulations now apply through December 31, 2012, and include limits on fishing effort, restrictions on the use of fish aggregating devices (FADs),

closed areas, catch retention requirements, and requirements to carry observers. This action is necessary for the United States to satisfy its international obligations under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

DATES: Effective on [Insert date of publication in the FEDERAL REGISTER], comments must be submitted in writing by [Insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments on this interim rule, identified by NOAA-NMFS-2011-0296, and the regulatory impact review (RIR) prepared for this interim rule may be sent to either of the following addresses:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking portal, at <http://www.regulations.gov>; or
- Mail: Mail written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700.

Instructions: Comments must be submitted to one of the two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered.

All comments received are part of the public record and generally will be posted on <http://www.regulations.gov> without change. All personal identifying information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the relevant required fields if you wish to

remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the RIR prepared for this interim rule are available from <http://www.regulations.gov> or may be obtained from Michael D. Tosatto, NMFS PIRO (see address above).

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS PIRO, 808-944-2219.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

This interim rule is also accessible at <http://www.gpoaccess.gov/fr>.

##### Background on the Convention and the WCPFC

The Convention Area comprises the majority of the western and central Pacific Ocean (WCPO). A map showing the boundaries of the Convention Area can be found on the WCPFC Web site at: <http://www.wcpfc.int/doc/convention-area-map>. The Convention focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the WCPO.

As a Contracting Party to the Convention and a Member of the WCPFC, the United States is obligated to implement the decisions of the WCPFC. The WCPFC Implementation Act (16 U.S.C. 6901 et seq.), authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention,

including the decisions of the WCPFC. The Secretary of Commerce has delegated the authority to promulgate regulations to NMFS.

#### Existing Regulations to Implement WCPFC Decision for Bigeye Tuna and Yellowfin Tuna in Purse Seine Fisheries

At its Fifth Regular Session, in December 2008, the WCPFC adopted CMM 2008-01. The CMM, available with other decisions of the WCPFC at <http://www.wcpfc.int/decisions.htm>, places certain obligations on the WCPFC Members, Participating Territories, and Cooperating Non-members (collectively, CCMs). The CMM was based in part on the findings by the WCPFC that the stock of bigeye tuna (Thunnus obesus) in the WCPO was experiencing a fishing mortality rate greater than the rate associated with maximum sustainable yield and that the stock of yellowfin tuna (Thunnus albacares) in the WCPO was experiencing a fishing mortality rate close to the rate associated with maximum sustainable yield. The Convention calls for the WCPFC to adopt measures designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors. Accordingly, the objectives of CMM 2008-01 include achieving, over the 2009-2011 period, a reduction in fishing mortality on bigeye tuna in the WCPO of at least 30 percent and no increase in fishing mortality on yellowfin tuna in the WCPO, relative to a specified historical baseline.

In 2009, NMFS issued regulations to implement the applicable provisions of CMM 2008-01, with one rule devoted to the purse seine-related provisions of the CMM (final rule published August 4, 2009; 74 FR 38544) and another rule devoted to the longline-related provisions (final rule published December 7, 2009; 74 FR 63999). The regulations for purse seine fishing are codified at 50 CFR 300.223(a)-(e) (paragraph (f), which addresses sea turtle take mitigation, is unaffected by this rulemaking and remains effective) and the regulations for longline fishing are

codified at 50 CFR 300.224. In accordance with the effective dates of CMM 2008-01, these regulations apply through December 31, 2011.

The existing regulations for purse seine fishing include: (1) specific limits on the number of fishing days that may be spent by the U.S. purse seine fleet on the high seas and in areas under U.S. jurisdiction (including the U.S. exclusive economic zone, or EEZ) within the Convention Area for each of: the one-year periods 2009, 2010, and 2011 (3,882 fishing days each); the two-year periods 2009-2010 and 2010-2011 (6,470 fishing days each); and the three-year period 2009-2011 (7,764 fishing days); (2) specific periods in each of the years 2009 (August-September), 2010 (July-September) and 2011 (July-September) during which U.S. fishing vessels are prohibited from setting purse seines around or within one nautical mile of fish aggregating devices (FADs), deploying FADs, or servicing FADs or their associated electronic equipment in the Convention Area; (3) two specific areas of high seas within the Convention Area in which U.S. purse seine vessels are prohibited from fishing, effective from January 1, 2010, through December 31, 2011; (4) a prohibition, which went into effect June 14, 2010, and continues through December 31, 2011, on U.S. purse seine fishing vessels from discarding at sea within the Convention Area any bigeye tuna, yellowfin tuna, or skipjack tuna (Katsuwonus pelamis), with certain exceptions; and (5) a requirement, effective August 1 through September 30, 2009, and from January 1, 2010, through December 31, 2011, that U.S. purse seine vessels carry a WCPFC observer on all trips in the Convention Area in the area between 20° N. latitude and 20° S. latitude, with certain exceptions.

WCPFC Decision to Extend Conservation and Management Measure for Bigeye Tuna and Yellowfin Tuna

The WCPFC was scheduled to hold its regular annual session in December 2011, and intended to discuss at that time CMM 2008-01, including whether to adopt the same or changed measures for 2012 and beyond. However, that session was postponed unexpectedly due to a fire at a major power plant and resulting power failures in Palau, where the meeting was scheduled to be held. The annual session is now tentatively scheduled to take place in March 2012. Because of the postponement of its regular annual session and the expiration of CMM 2008-01 at the end of 2011, the WCPFC made an intersessional decision on December 20, 2011, to extend the effectiveness of CMM 2008-01 until the WCPFC is able to hold its regular annual session. The decision specifies that those provisions of the CMM that are tied to specific years will continue to operate as they did in 2011 (e.g., the dates of the FAD prohibition period for 2012 are the same as for 2011).

#### The Action

This interim rule implements, for purse seine fisheries, the decision of the WCPFC to extend the effectiveness of CMM 2008-01 past December 31, 2011. Specifically, it extends the applicable dates of the five elements of the existing implementing regulations for purse seine fishing, at 50 CFR 300.223(a)-(e), through December 31, 2012.

NMFS would implement the longline-related provisions of the WCPFC's recent decision to extend CMM 2008-01 in a separate rulemaking in early 2012. Implementation of the longline-related provisions of the extended CMM 2008-01 would need to take into account Section 113 of the recently enacted Consolidated and Further Continuing Appropriations Act, 2012 (Act), which could affect the way NMFS assigns catches in U.S. longline fisheries with respect to the catch limits. All other existing regulations for longline fishing remain in place and NMFS remains able to account for all catches.

This interim rule amends the existing regulations for purse seine fishing such that they apply in 2012 as follows:

(1) Fishing Effort Limits

Limits are established on the number of fishing days that may be spent by the U.S. purse seine fleet on the high seas and in areas under U.S. jurisdiction within the Convention Area for each of: 2012 (3,882 fishing days); the two-year period 2011-2012 (6,470 fishing days); and the three-year period 2010-2012 (7,764 fishing days). If one of the limits is reached and the fishery is closed with notice from NMFS, it will be prohibited to use a U.S. purse seine vessel to fish in the Convention Area on the high seas or in areas under U.S. jurisdiction until the end of the applicable period.

(2) FAD Prohibition Period

From July 1 through September 30, 2012, owners, operators, and crew of U.S. fishing vessels will be prohibited from setting a purse seine around a FAD or within one nautical mile of a FAD or deploying or servicing a FAD or its associated electronic equipment in the Convention Area. It will also be prohibited during this period to set a purse seine in a manner intended to capture fish that have aggregated in association with a FAD, such as by setting the purse seine in an area from which a FAD has been moved or removed within the previous eight hours or setting the purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD.

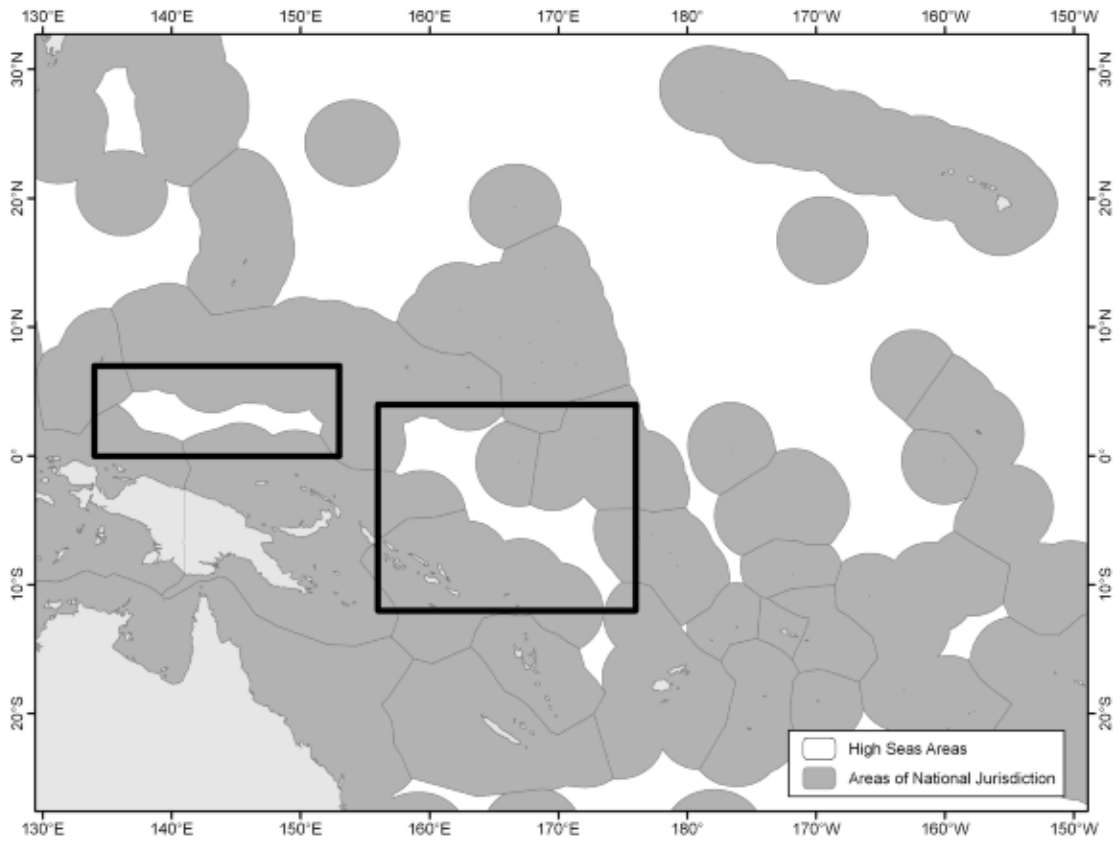
(3) High Seas Area Closures

Two specific areas of high seas within the Convention Area are closed to purse seine fishing through December 31, 2012. The two areas are depicted on the map in Figure 1.

Figure 1. High seas closed areas. Areas of high seas are indicated in white; areas of claimed national jurisdiction, including territorial seas, archipelagic waters, and exclusive economic

zones, are indicated in dark shading. Areas closed to purse seine fishing through December 31, 2012, are all high seas areas (in white) within the two rectangles bounded by the bold black lines. The coordinates of the two rectangles are set forth in the regulation. This map displays indicative maritime boundaries only.





#### (4) Catch Retention

It is prohibited to discard any bigeye tuna, yellowfin tuna, or skipjack tuna from a U.S. purse seine vessel at sea within the Convention Area through December 31, 2012. Exceptions are provided for fish that are unfit for human consumption for reasons other than their size, for the last set of the trip if there is insufficient well space to accommodate the entire catch, and for cases of serious malfunction of equipment that necessitate that fish be discarded.

#### (5) Observer Coverage

U.S. purse seine vessels must, through December 31, 2012, carry observers deployed as part of the WCPFC Regional Observer Programme (WCPFC ROP) or deployed by NMFS on all trips in the Convention Area. These observer requirements do not apply to fishing trips for which: the portion of the fishing trip within the Convention Area takes place entirely within areas under U.S. jurisdiction or entirely within areas under the jurisdiction of any other single nation; no fishing takes place in the Convention Area in the area between 20° N. latitude and 20° S. latitude; or NMFS has determined that an observer is not available.

These regulations are being issued without prior notice or public comment because of the unexpected postponement of this year's regular annual session of the WCPFC and its consequent intersessional decision to extend the effectiveness of CMM 2008-01. That decision, made December 20, 2011, allowed NMFS extremely limited time for implementation. In order to satisfy the international obligations of the United States as a Contracting Party to the Convention, NMFS must implement three of the five elements – the high seas closed areas, the catch retention requirements, and the observer coverage requirements – by January 1, 2012, or as soon as possible thereafter. NMFS believes it appropriate to include the remaining two elements, extension of the fishing effort limits and the FAD prohibition period, in this interim rule because

these elements are directly related to the other three elements, and because their inclusion will provide the public with notice of how these two elements will apply in 2012. However, NMFS notes that any closure resulting from reaching one of the limits on fishing effort will go into effect only if and when one of the limits is reached in 2012, and that the FAD-related restrictions will be in effect from July 1, 2012, through September 30, 2012. NMFS will consider public comments on this interim rule and issue a final rule, as appropriate.

The WCPFC may make a binding decision at its anticipated annual session in early 2012 that would alter the extended provisions of CMM 2008-01 as they apply in 2012. NMFS would undertake another rulemaking, as appropriate, to implement that decision.

#### Classification

The NMFS Assistant Administrator has determined that this interim rule is consistent with the WCPFC Implementation Act and other applicable laws.

#### Administrative Procedure Act

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and prior opportunity for public comment on this action. This rule will continue regulations implemented under the authority of CMM 2008-01 and the WCPFC Implementation Act beyond the current expiration of December 31, 2011. Affected entities have been subject to these measures since 2009. The conditions prompting the regulations established in 2009 remain largely unchanged. However, the WCPFC did not decide to extend CMM 2008-01 until December 20, 2011. The decision was prompted by the unexpected postponement of the WCPFC annual session scheduled for December 2011. Thus, NMFS had limited notice of the need to implement the WCPFC decision to extend CMM 2008-01. In order to satisfy its international obligations under the Convention and ensure there is no gap, or as brief a gap as possible, in the application of important

conservation measures for bigeye tuna and yellowfin tuna, NMFS must implement the provisions of the WCPFC's decision to extend the provisions of CMM 2008-01 applicable to purse seine fisheries by January 1, 2012, or as soon as possible thereafter. NMFS would not be able to do so if it provided opportunity for prior notice and prior public comment. Therefore, prior notice and prior opportunity for public comment on this action would be impracticable and contrary to the public interest.

There is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. As described above, NMFS had limited notice of the need to implement the WCPFC intersessional decision to extend CMM 2008-01. These measures are intended to reduce fishing pressure on bigeye tuna and yellowfin tuna in the WCPO in order to maintain or restore stocks at levels capable of producing maximum sustainable yield on a continuing basis. The conditions prompting the existing regulations remain largely unchanged, and failure to immediately extend those regulations consistent with the WCPFC intersessional decision while the WCPFC develops more lasting international conservation measures could result in excessive fishing pressure on these stocks, in violation of international and domestic obligations. Therefore, NMFS must implement the provisions of the WCPFC's decision to extend the provisions of CMM 2008-01 applicable to purse seine fisheries by January 1, 2012, or as soon as possible thereafter. NMFS would not be able to do so if it provided a 30-day delay in effective date. Therefore, compliance with the 30-day delay requirement would be impracticable and contrary to the public interest.

#### Coastal Zone Management Act (CZMA)

NMFS has determined that this rule will be implemented in a manner consistent, to the maximum extent practicable, with the enforceable policies of the approved coastal zone management programs of American Samoa, the Commonwealth of the Northern Mariana

Islands, Guam, and the State of Hawaii. This determination has been submitted for review by the responsible territorial and state agencies under section 307 of the CZMA.

#### Executive Order 12866

This interim rule has been determined to be not significant for purposes of Executive Order 12866.

#### National Environmental Policy Act

This interim rule is an extension or a change in the period of effectiveness of a regulation that has been subject to prior analyses supporting a finding of no significant impact determination. As such, NMFS has determined that this action is categorically excluded from the need to prepare an Environmental Assessment or an Environmental Impact Statement, pursuant to NOAA Administrative Order 216-6, Section 6.03d.4(a).

#### Regulatory Flexibility Act

This interim rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

#### List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: December 27, 2011

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 et seq.

2. In § 300.223, paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and introductory text to paragraphs (b), (c)(1), (d)(3), and (e)(2) are revised to read as follows:

§ 300.223 Purse seine fishing restrictions.

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(i) For each of the years 2009, 2010, 2011, and 2012 there is a limit of 3,882 fishing days.

(ii) For each of the two-year periods 2009–2010, 2010–2011, and 2011–2012, there is a limit of 6,470 fishing days.

(iii) For each of the three-year periods 2009–2011 and 2010–2012, there is a limit of 7,764 fishing days.

\* \* \* \* \*

(b) Use of fish aggregating devices. From August 1 through September 30, 2009, and from July 1 through September 30 in each of 2010, 2011, and 2012, owners, operators, and crew of fishing vessels of the United States shall not do any of the following in the Convention Area:

\* \* \* \* \*

(c) Closed areas. (1) Effective January 1, 2010, through December 31, 2012, a fishing vessel of the United States may not be used to fish with purse seine gear on the high seas within

either Area A or Area B, the respective boundaries of which are the four lines connecting, in the most direct fashion, the coordinates specified as follows:

\* \* \* \* \*

(d) \* \* \*

(3) Effective from the date announced pursuant to paragraph (d)(1) of this section through December 31, 2012, a fishing vessel of the United States equipped with purse seine gear may not discard at sea within the Convention Area any bigeye tuna (Thunnus obesus), yellowfin tuna (Thunnus albacares), or skipjack tuna (Katsuwonus pelamis), except in the following circumstances and with the following conditions:

\* \* \* \* \*

(e) \* \* \*

(2) Effective January 1, 2010, through December 31, 2012, a fishing vessel of the United States may not be used to fish with purse seine gear in the Convention Area without a WCPFC observer on board. This requirement does not apply to fishing trips that meet any of the following conditions:

\* \* \* \* \*

[FR Doc. 2011-33593 Filed 12/29/2011 at 8:45 am; Publication Date: 12/30/2011]